



# guantánamo global justice initiative news briefing

center for  
constitutional  
rights

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## 15 detainees currently face military commissions

Guantanamo's military commissions continued as 15 detainees have now been charged before the commissions. No trials have been completed and 1 conviction, resulting from the guilty plea of Australian David Hicks, have resulted. The military commissions, created by the October 2006 passage of the Military Commissions Act, provide far fewer protections than either standard courts-martial, which try soldiers in times of war, or the U.S. federal criminal court system, which historically has tried cases involving charges of terrorism. For example, the military commissions allow the introduction of hearsay evidence and evidence obtained through coercion, require only 2/3 jury vote for conviction, and the jury is composed solely of members of the military.

On March 31, 2008 charges were sworn against detainee Ahmed Khalfan Ghailani, a Tanzanian man who was transferred to Guantánamo from secret CIA detention in September 2006. Mr. Ghailani was in the CIA interrogation program for over two years and is accused of playing a role in the 1998 bombing of the U.S. Embassy in Dar es Salaam, Tanzania. A Manhattan Federal court indicted him 10 years ago. Rather than trying him in the federal courts, the government opted instead to try him in the military commissions, where it faces an unfair advantage and where the secrets of its CIA detention program will continue to be hidden. The government plans to seek the death penalty for Ghailani, as it has for six other detainees facing military commissions.

On April 7, 2008, charges were referred against Afghan detainee Mohammad Kamin, who was charged with "providing material support for terrorism" during the U.S. war on Afghanistan. Twelve other detainees currently face military commissions, including six detainees against whom the government is seeking the death penalty, accusing them of involvement with the attacks of September 11, 2001. The military

has stated on numerous occasions that it plans to try up to 80 detainees in the military commissions, but has moved slowly in filing charges. The vast majority of the approximately 275 men currently held at Guantánamo have never been charged with any crime and have been held for over six years in arbitrary detention without charge or trial throughout that time.

## Former CIA "ghost" detainee transferred to Guantánamo

On March 14, 2008, the U.S. military announced that it had transferred Muhammad Rahim al-Afghani to Guantánamo Bay, and that he had previously been held in secret CIA "ghost" detention. The CIA secret "ghost" detention program was allegedly emptied in September 2006, when 14 former ghost detainees were transferred to Guantánamo Bay; the military transferred another detainee in April 2007. Inside the secret CIA detention program, the use of so-called "enhanced interrogation techniques," including cruel, inhumane and degrading treatment, as well as techniques amounting to torture, including waterboarding (a torture technique that simulates drowning), have been officially and explicitly allowed. The U.S. government accuses him of involvement with Al-Qaeda. At the time the transfer was announced, the CIA refused to state if it was currently holding any other detainees in its secret prisons.

## Former military commissions chief prosecutor testifies for the defense in Salim Hamdan commission; military judge allows prosecution of former child soldier

On April 28, 2008, former chief military commissions prosecutor Col. Mo Davis took the stand and testified for the defense in a pretrial hearing for the military commission of Guantánamo detainee Salim Ahmad Hamdan. Davis argued that the commissions process is fundamentally flawed, and corrupted by political involvement and demands for convictions on the part of high-ranking military and administration officials.

In further developments in the Hamdan hearings, on April 30, 2008, the military judge presiding over the military commission, Lt. Col. Keith Allred, ordered that Hamdan would be allowed to contact four of the so-called "high value detainees" – former CIA secret prisoners – via a written communication bearing his signature, seeking their testimony to support his defense. However, this falls far short of what was requested by Hamdan's attorneys, including two-way communication between Hamdan and the former ghost detainees, and a meeting with one of Hamdan's military defense attorneys, assuring the former ghost detainees of the request's sincerity. Hamdan is currently boycotting the military commissions process. The 2006 landmark U.S. Supreme Court case, Hamdan v. Rumsfeld, which invalidated an earlier military commissions process and affirmed the applicability of Common Article 3 of the Geneva Conventions to Guantánamo detainees, resulted from Hamdan's earlier challenge of the military commissions.

Also on April 30, 2008, military judge Col. Peter Brownback, presiding over the military commission of accused former child soldier, Canadian citizen and Guantánamo detainee Omar Khadr, ruled that the prosecution of Khadr continued despite the fact that he was only 15 when seized by U.S. forces in Afghanistan and brought to Guantánamo Bay. By treaty, Khadr should be recognized as a child soldier entitled to protection, but the military – and now the military commissions courts – have refused to acknowledge this status. Khadr's attorneys have also appealed to a federal appeals court in Washington, D.C. to have his initial determination as an "enemy combatant" overturned due to his juvenile status at the time.

Detainees Ahmad al-Darbi and Ibrahim al-Qosi, also charged before the military commissions, have, to date, refused to participate in what they have termed "sham" proceedings.

## Bush vetoes anti-waterboarding measure

On March 9, 2008, President George W. (continued on pg. 2)

Bush vetoed a bill passed by Congress that would have prohibited the CIA from using waterboarding and other forms of torture against detainees. The intelligence authorization bill, which permits U.S. government spending on intelligence agencies and related expenses, prohibited U.S. intelligence agencies, including the Central Intelligence Agency (CIA), from using techniques not allowed by a procedures manual for U.S. military personnel, the Army Field Manual. The manual prohibits harsh interrogation techniques such as waterboarding and other forms of torture and cruel, inhumane and degrading treatment.

Waterboarding is a form of torture that induces drowning in a victim; the drowning is stopped before the point of death by the use of a rag, plastic wrap, or another obstruction placed in the victim's mouth. Its use against detainees by the CIA has been confirmed. Bush's veto confirms his continued position that the president has the authority to allow the CIA to use waterboarding and other forms of torture, despite clear prohibitions in U.S. and international law.

### **Reports: Bush Administration officials directly approved torture program**

On April 9, 2008, news reports revealed that the highest-level Bush administration officials were deeply involved in discussions and authorization of torture against secret CIA "ghost" detainees. In an interview, President Bush also acknowledged that he knew about these discussions and approved of them.

Reports clarified that these discussions were not general but instead featured specific discussions of individual detainees and detailed discussions of so-called "enhanced interrogation techniques," to the level of mapping out interrogation sessions and the number of times a particular tactic would be used, including slapping, pushing, sleep deprivation, or waterboarding.

This committee included Vice President Dick Cheney, former National Security Adviser Condoleezza Rice, Defense Secretary Donald Rumsfeld and Secre-

tary of State Colin Powell, as well as CIA Director George Tenet and Attorney General John Ashcroft, who all directly participated in approving the CIA's use of cruel, inhumane and degrading treatment against detainees.

Also, on April 1, 2008, the legal memo from March of 2003 by former administration attorney John Yoo that purported to authorize the use of torture was declassified. The memo was widely attacked within the legal community for attempting to provide a legal safeguard for torture and protect government officials from prosecution for authorizing torture. Many organizations, including the Center for Constitutional Rights, called upon Boalt Hall Law School at the University of California - Berkeley, Yoo's current employer, to fire or sanction him for unethical conduct regarding this memo.

### **Attorney Gives Classified Briefing to Senate Intelligence Committee on Details of CIA Torture Program**

Gitanjali Gutierrez, an attorney at the Center for Constitutional Rights representing former CIA "ghost" detainee Majid Khan, who was held in secret CIA prisons for three years before his transfer to Guantanamo Bay, spoke with the Senate Intelligence Committee on March 28, 2008.

Gutierrez briefed staff members on the torture and abuse of Khan while he was held in the secret CIA prisons. Gutierrez is the first attorney to speak with Congress after such a meeting with a former CIA secret detainee.

The 90-minute meeting was closed, and Gutierrez is forbidden from revealing what Khan has told her about his treatment because the government declared prisoners' statements to be classified. Gutierrez said her testimony was aimed at giving Congress independent information on the C.I.A. program, which she said "is operating criminally, shamefully and dangerously."

### **Rep. Delahunt Holds Field Briefing in Boston on Guantánamo's Refugees**

Representative William Delahunt, member of Congress, held a field briefing in Boston on March 26, 2008, focusing on Guantanamo's refugees. The briefing, held on behalf of the House Subcommittee on International Organizations, Human Rights, and Oversight, addressed the plight of dozens of Guantanamo detainees who cannot return home due to fear of persecution.

Emi Maclean, attorney at the Center for Constitutional Rights, as well as attorneys Sabin Willett and Michael Mone, who represent refugees held at Guantanamo Bay, addressed the briefing, detailing the needs of refugees at Guantanamo to find safe havens.

An estimated 50 detainees cannot return home for fear of torture. At least two of those men had been designated refugees by the United Nations High Commissioner for Refugees before they arrived at Guantánamo. So far, neither the United States nor European countries, where some detainees have relatives, have been willing to give them safe haven. In fact, the U.S. has already sent almost 40 detainees back to countries that are known for human rights abuses, including Uzbekistan, Libya, Tunisia, and Egypt.

### **Former detainee Murat Kurnaz releases new book**

Former Guantanamo detainee Murat Kurnaz released his new book, "Five Years of My Life: An Innocent Man in Guantánamo" in English in April 2008. Kurnaz, a Turkish citizen and German resident, was seized in Pakistan in 2002 where he was involved with religious studies and turned over to U.S. forces, likely in exchange for a bounty. He was held first in Kandahar, Afghanistan and then in Guantánamo Bay for nearly five years, enduring countless interrogations and sleep deprivation. Kurnaz was finally released in August 2006 and returned to Germany, where he lives with his mother. Kurnaz' book details the harrowing experience of his detention without legal process as an innocent man for five years. It includes a foreword by singer Patti Smith and an afterword by Baher Azmy, Kurnaz's U.S.-based attorney, who

**(continued on pg. 3)**

represented him in U.S. courts.

### **CIA refuses to turn over 7,000 documents in lawsuit**

The Central Intelligence agency filed a motion on April 23, 2008 seeking to end a lawsuit by human rights groups and avoid turning over more than 7000 documents related to its secret "ghost" detention and extraordinary rendition program.

Among other assertions, the CIA claimed that it did not have to release the documents because many consist of correspondence with the White House or top Bush administration officials, or because they are between parties seeking legal advice on the programs, including guidance on the legality of certain interrogation procedures. The CIA confirmed that it requested—and received—legal advice from attorneys at the Department of Justice Office of Legal Counsel concerning these procedures.

The Center for Constitutional Rights, Amnesty International USA, and the Center for Human Rights and Global Justice at New York University filed Freedom of Information Act (FOIA) requests with several U.S. government agencies, including the CIA. These FOIA requests sought information about individuals who are—or have been—held by the U.S. government or detained with U.S. involvement, and about whom there is no public record. The requests also sought information about the government's legal justifications for its secret detention and extraordinary rendition program

Although the CIA did release a paltry number of documents in response to the FOIA request, most were already in the public domain, such as newspaper articles and a single copy of the Fourth Geneva Convention which governs the treatment of civilians in times of war. The limited relevant documents that were released were documents pertaining to briefings demanded by the House and Senate Intelligence Committees regarding various aspects of the overseas detention and interrogation program.

### **9 Guantánamo prisoners transferred out of Guantánamo in May 2008**

On May 1, 2008, nine Guantánamo detainees were transferred from the detention camp, including Al Jazeera cameraman Sami al-Haj, a Sudanese detainee whose fate was the subject of a worldwide campaign for his release. Al-Haj's release came the day before World Press Freedom Day. Two other Sudanese, Amir Yacoub al-Amir and Walid Ali, were repatriated as well, as was one Moroccan detainee, Said Boujaad. 5 Afghan detainees were also repatriated to Afghanistan.

#### **about the news briefing..**

This news briefing is produced monthly by the Center for Constitutional Rights, which coordinates the representation of detainees at Guantánamo Bay with a network of over 500 pro bono habeas counsel. It is translated into Arabic and Dari and is available online at

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